



महाराष्ट्र शासन राजपत्र

भाग एक-ल

वर्ष ६, अंक ३२]

गुरुवार ते बुधवार, ऑक्टोबर २३-२९, २०१४/कार्तिक १-७, शके १९३६

[पृष्ठे १६, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील
(भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त)
अधिसूचना, आदेश व निवाडे.

IN THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

COMPLAINT (ULP) No. 44 of 1995.—Shri Subhash Ganapat Bhosale, Ward No. 9, Ichalkaranji, Nagarpalika Chawl No. 1 Room No. 15, Ichalkaranji.—*Complainant*.—*Versus*—The Chief Officer, Ichalkaranji Municipal Council, Ichalkaranji.—*Respondent*.

In the matter of Complaint under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P Act, 1971.

CORAM.—Shri C. A. Jadhav, Member.

Appearances.—Smt. N. A. Ramtirthakar, Advocates for the Complainant.
Shri R. L. Chavan, Advocate for the Respondent.

Judgement

This is a complaint purported to be under section 28(1) read with item 9 of Sch. IV of the M. R. T. U. and P. U. L. P Act.

2. Admittedly, the Complainant was appointed as a driver on daily wage basis with effect from 5th November 1969 by order dated 1st November 1969 of Chief Officer of the Respondent Ichalkaranji Municipal Council. He was then confirmed with effect from 1st October 1991.

3. It is case of the Complainant that he is continuously working from 5th November 1969 and ought to have been confirmed from such date. Seniority list of other drivers shows that they are confirmed from the dates of their appointments. He requested the Council, time and again, to change his date of his confirmation but in vain. He is not shown at the requisite serial number in the gradation list and, therefore, he is losing chances of promotion and higher scales. Council's failures to confirm him from 5th November 1969 is contrary to the service conditions and is an unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. It is then contended that the cause of action is recurring one and the complaint is within limitation. Finally, the Complainant has prayed for requisite declaration of unfair labour practice, direction to confirm him on the post of driver with effect from 5th November 1969 with continuity of service and other consequential reliefs.

4. The Council did not file its written statement but produced copies of concerned pages of Complainant's service book, with list Exh. C-4.

5. Now, following points, arise for my determination :—

(i) Does the Complainant prove that the council ought to have confirmed him with effect from 5th November 1969 ?

(ii) Does the Complainant prove that the council has engaged in unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act ?

(iii) What order ?

6. My findings, on above points are as under :—

(i) No.

(ii) No.

(iii) The complaint is dismissed.

Reasons

7. The Complainant has produced copies of order dated 1st November 1969 appointing him as a driver on daily wage basis, appointment order dated 19th September 1971 appointing him on probation for a period of 3 months with effect from 1st November 1971 and confirmation order dated 1st January 1972, with list Exh. U-4. As stated above, the Council has produced copies of concerned pages of Complainant's service book with list Exh. C-4. None of the parties led oral evidence.

8. Smt. Ramtirthakar, Learned Advocate representing the Complainant submitted that the Complainant was appointed on a vacant post, though on daily wage basis, with effect from 5th November 1969. He then continued to work, till today. As such, he ought to have been confirmed with effect from 5th November 1969.

9. Shri Chavan, learned Advocate representing the Respondent- Council replied that the Complainant was appointed in place of another daily wage driver Shri Kumbhar and, therefore, was not appointed permanently. Later on, the Complainant was appointed on probation for three months with effect from 1st October 1971. His service book shows that he is paid wages of a permanent employee from 1st October 1971 and there is no dispute about his confirmation on such date. Alleged seniority and gradation list are not produced. As such, the Complainant is not entitled to permanency with effect from 5th November 1969.

10. The facts arising out of Material placed on record are no longer in dispute. It appears from the appointment order dated 1st November 1969 that the Complainant was appointed as a driver on daily wage basis and that too for a period of 30 days. There is no evidence on record to show that he continued to work from 5th November 1969 till 1st October 1971 *i. e.* the date on which he was appointed on a probationer for three months. Consequently, it cannot be accepted that he has put in continuous service with effect from 5th November 1969. In any case, he was appointed on daily wages and that too for a fixed period of 30 years. Council's Act of confirming him with effect from October, 1971 therefore, cannot be faulted. No evidence is produced on record by the Complainant to show that his alleged co-workers are confirmed from their dates of appointments, as alleged. It also cannot be accepted that there is continuous cause of action. In the eyes of law, alleged unfair labour practice was complete on confirming the Complainant on 1st October 1971 and only effect thereof continues. In such circumstances, I find that the Complainant has failed to prove his case. Accordingly, I answer Point Nos. 1 and 2 in the negative and pass following order.

Order

(i) The Complaint is dismissed.

(ii) Parties to bear their own costs.

Kolhapur,

Dated the 6th September 2003.

C. A. JADHAV,

Member,

Industrial Court, Kolhapur.

V. D. PARDESHI,

Asstt. Registrar,

Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

COMPLAINT (ULP) No. 66 of 2001.—Shri Musa Abdul Momin, At : 9/670, Vikramnagar, Ichalkaranji.—*Complainant*.—*Versus*—The Chief Officer, Ichalkaranji Municipal Council, Ichalkaranji.—*Respondent*.

In the matter of Complaint under section 28(1) read with item 9 of the Sch. IV of the M.R.T.U. and P.U.L.P Act.

CORAM.—Shri C. A. Jadhav, Member.

Appearances.—Smt. N. A. Ramtirthakar, Advocates for the Complainant.

Shri R. L. Chavan, Advocate for the Respondent.

Judgement

This is a complaint purported to be under section 28(1) read with item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

2. Admittedly, the Complainant was appointed as a cleaner on daily wage basis with effect from 23rd October 1972 by order dated 20th October 1972 of Chief Officer of the Respondent - Ichalkaranji Municipal Council. He was made permanent with effect from 22nd February 1976.

3. It is case of the Complainant that he is in employment since 23rd October 1972 and ought to have been confirmed from such date. Seniority list of other cleaners shows that they are confirmed from their dates of appointments. He requested the Council time and again to change his date of confirmation but in vain. He is not shown at the requisite serial number in the gradation list and, therefore, is losing chances of promotion and higher scale. Council's failure to confirm him from 23rd October 1972 is contrary to service conditions and is an unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. It is then contended that the cause of action is recurring and the complaint is within limitation. Finally, the Complainant has prayed for requisite declaration of unfair labour practice, direction to confirm him on the post of cleaner with effect from 23rd October 1972 with continuity of service and other consequential reliefs.

4. The Council did not file its written statement but produced concerned pages of Complainant's service book with list Exh. C-3.

5. Now, following points, arise for my determination :—

(i) Does the Complainant prove that the council ought to have confirmed him with effect from 23th December 1972 ?

(ii) Does the Complainant prove that the council has engaged in unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act ?

(iii) What order ?

6. My findings, on above points are as under :—

(i) No.

(ii) No.

(iii) The complaint is dismissed.

Reasons

7. The Complainant has produced copies of order dated 20th October 1972 appointing him on daily wage basis as well as order dated 14th February 1976 confirming him with effect from 23rd February 1976. As stated above, the Council has produced copies of concerned pages of Complainant's service book with list Exh. C-3. None of the parties led oral evidence.

8. Smt. Ramtirthakar, learned Advocate representing the Complainant submitted that the Complainant was appointed against a vacant post, though on daily wage basis with effect from 23rd October 1972. He then continued to work till confirmation. As such, he ought to have been confirmed with effect from 23rd October 1972.

9. Shri Chavan, learned Advocate representing the Respondent - Ichalkaranji Municipal Council replied that Complainant's appointment order, produced with list Exh. U-4/1 shows that posts of cleaners are not sanctioned by the Directors of Municipal Administration and the Complainant is appointed on daily wage basis. Eventually, he was not appointed permanently and that too on vacant post. He has not worked continuously since then. He is then made permanent as per Award of Industrial Tribunal, Mumbai. In such circumstances, question of his permanency is already adjudicated. Even then, a false complaint is filed suppressing material facts. Alleged seniority and gradation list are not produced. In addition, the complaint is barred by limitation. As such, the Complainant is not entitled to permanency with effect from 23rd October 1972.

10. The facts arising out of material placed on record are no longer in dispute. It is seen from Complainant's order that he is not appointed against vacant and sanctioned post. On the contrary, he is appointed on daily wage basis. There is no evidence on record to show that he continued to work from 23rd October 1972 till confirmation. Consequently, it cannot be accepted that he has put continuous service with effect from 23rd October 1972. His confirmation order says that he is made permanent as per Award dated 9th December 1975 made by Industrial Tribunal, Mumbai. In my judgment, therefore, the controversy is no longer in dispute Advocate Smt. Ramtirthakar explained that the Complainant is unaware of Award if any and orders therein. In my Judgment, the Complainant is bound by the Award and now cannot say that he ought to have been confirmed with effect from 23rd October 1972. It appears that the Council has confirmed him as per Award of Industrial Tribunal, Mumbai. In such circumstances, Council's Act of confirming him from the requisite date cannot be faulted. No evidence is produced on record by the Complainant to show that his alleged co-workers are confirmed from their dates of appointments, as alleged. It also cannot be accepted that there is continuous cause of action. In the eyes of law, alleged unfair labour practice was complete on confirming the Complainant and only effect thereof continues. In such circumstances I find that the Complainant has failed to prove his case. Accordingly, I answer Points 1 and 2 in the negative and pass following order.

Order

(i) The Complaint is dismissed.

(ii) Parties to bear their own costs.

Kolhapur,

Dated the 11th September 2003.

C. A. JADHAV,

Member,

Industrial Court, Kolhapur.

V. D. PARDESHI,

Asstt. Registrar,

Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, KOLHAPUR.

REVISION APPLICATION (ULP) No. 283 OF 1995.—Deputy Engineer, Employment Guarantee Scheme (PWD), Sub-Division, Atpadi, District Sangli.—*Petitioner.*—*Versus*—Dhondiram Namdeo Jagadale, At-post Nigadi Khurda, Taluka Jath, Dist. Sangli.—*Respondent.*

In the matter of Revision under section 44 of the M.R.T.U. and P.U.L.P. Act.

CORAM.—Shri C. A. Jadhav, Member.

Appearances.—Shri S. R. Pisal, Assistant Government Pleader for the Petitioner.

Shri H. G. Bhokare, Advocate for the Respondent.

Judgement

This is a revision by Original Respondent No. 1 Deputy Engineer of Employment Guarantee Scheme at Atpadi Sub-Division, as District Sangli challenging legality of order passed below Exh. U-2 in Complaint (ULP) No. 20 of 1995 by Labour Court, Sangli, whereby, he and other Original Respondents are directed to temporarily allow Original Complainant to join duties, pending the hearing and final disposal of main complaint.

2. Present Respondent (hereinafter referred to as the Complainant) filed above complaint on 22nd March 1995 under item 1 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, alleging that he was in employment from 21st September 1990 as a driver at Kavathe Mahankal Sub-Division, then transferred to Tasgaon Sub-Division and lastly to Atpadi Sub-Division, put continuous service of more than 240 days in each year but was terminated on 21st February 1995 without notice, notice pay and retrenchment compensation. It was further alleged that reason put-forth for the termination *i. e.* repairs of the road-roller are patently false and other vehicles were available on which he could be easily accommodated. Finally, he prayed for reinstatement with continuity of service and full back wages, he also made interim application (Exh. U-2) under section 30(2) of the M.R.T.U. and P.U.L.P. Act to direct the Respondent to allow him to join duties, till decision of main complaint.

3. Original Respondent objected *vide* say (Exh. C-4) and written statement (Ex. C-5) contending that the Complainant was employed as and when work was available, kept on nominal muster role but never put continuous service of 240 days in 12 calendar months. In fact, he was not transferred to Atpadi Sub-Division but was sent to work temporarily under Atpadi Sub-Division. As such, question of compliance of provisions under section 25 F of the I. D. Act does not arise. The road-roller required heavy repairs and hence the Complainant was discontinued on 21st February 1995. Lastly, the Respondents prayed for dismissal of the interim application as well as the complaint.

4. The Complainant produced xerox copy of log-book and his relieving letter dated 21st February 1995 relieving him from Atpadi Sub-Division, with list Exh. U-7. The Respondents produced list of drivers with list Exh. C-7 which shows that the Complainant is appointed on 21st September 1990.

5. Learned Labour Court, after hearing both parties, observed that relieving order of Atpadi Sub-Division, *prima facie*, establishes that the Complainant is transferred from Kavathe Mahankal to Atpadi Sub-Division and then against to Kavathe- Mahankal. It then observed that the Respondents have not produced material documents regarding tenure of Complainant's appointments from time to time but copy of the log-book shows that his service was continuous and there was no break while transferring him to Atpadi, as alleged by the Respondents. It then held that, therefore, Complainant's termination by violating provisions of section 25 F of the I.D. Act, is, *prima facie*, an unfair labour practice. Ultimately, it allowed the interim application on 21st April 1995. Said order is challenged in this revision.

6. Now, following points arise for my determination :—

(i) Whether impugned order directing original Respondents to allow the Complainant to join duties till decision of main complaint, warrants interference ?

(ii) What order ?

7. My findings on above points are as under :—

(i) No.

(ii) The revision application is dismissed.

Reasons

8. This being a revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinised rival pleadings meticulously. The only material question is whether the documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable.

9. Shri Pisal, learned Assistant Government Pleader representing the Respondent argued that establishments of Atpadi and Kavathe-Mahankal are separate and Complainant's working days under both Divisions cannot be clubbed to verify plea of continuous service. On the contrary, the Complainant was appointed from time to time as per availability of work and was dis-continued on account of heavy repairs to the road-roller. But the Labour Court misconstrued the facts and erred in granting the interim relief.

10. Learned Labour Court has recorded a *prima facie* finding of fact that Complainant's services at Kavathe-Mahankal and Atpadi were continuous. Reasoning thereof is quite logical and probable. Otherwise, it was not necessary for Atpadi Sub-Division to inform Kavathemahankal Sub-Division. Besides, same road roller was utilised by both Sub-Divisions. Consequently, it cannot be accepted *prima facie* that those were separate Divisions. Besides, the log-book shows that the Complainant has put continuous service of more than 240 days. As such, learned labour Court was well justified in holding that a *prima facie* case of unfair labour practices is made out. In such circumstances, no interference is warranted. Accordingly, I answer Point No. 1 in the negative and pass following order.

Order

(i) The revision application is dismissed.

(ii) Parties to bear their own costs.

C. A. JADHAV,

Member,

Industrial Court, Kolhapur.

Kolhapur.

Dated the 14th July 2003.

V. D. PARDESHI,

Asstt. Register,

Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

COMPLAINT (ULP) No. 335 of 1995.—Shri Pandurang Banduji Patil, At Post, Shirala, Taluka Shirala, District Sangli.—*Complainant*.—*Versus*—The Chief Executive Officer, Member and Secretary, Sangli Zilla Dekharekh Sahakari-Society Ltd, Shram Sahakari Building, 3rd Floor, Opp. to Sangli Municipal-Council, Revani Road, Sangli.—*Respondent*.

In the matter of Complaint under section 28(1) read with items 5 and 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

CORAM.—Shri C. A. Jadhav, Member.

Appearances.—Shri A. D. Kuigade, Advocate for the Complainant.

Shri P. L. Chavan, Advocate and S. V. Suryawanshi, Advocate for the Respondent.

Judgment

(Dictated in Open Court)

This is a complaint under section 28(1) read with items 5 and 9 of schedule IV of the M.R.T.U. and P.U.L.P. Act.

2. Admittedly, the Complainant joined the Respondent-Society as a Secretary on 24th September 1961. The Society served chargesheet dated 5th January 1989 upon him alleging seven misconducts. It was mainly alleged that he misappropriated society's fund. Then an enquiry took place. The Enquiry Officer held that all charges except charge No. 3, are not proved, *vide* report dated 30th March 1989. His report was considered by society's Management Committee in its meeting dated 2nd May 1989 and the Enquiry Officer was directed to make a fresh enquiry regarding charge No. 1 *i. e.* retention of Rs. 5,744.36 by the Complainant. The Enquiry Officer, after re-enquiry, submitted a report dated 17th August 1989 that charge Nos. 1 and 2 are not proved. The society then passed a resolution on 18th January 1990 that charge of changing entries in the accounts, erasers and cancellation of receipts, is proved against the Complainant and proposed to impose punishment of reducing his basic wages from Rs. 850 to original scale *i. e.* Rs. 710. The Complainant then gave an explanation on 9th March 1990. Ultimately, the society imposed proposed punishment by its order dated 26th July 1990.

3. It is case of the Complainant that he was working under the Society and was under its supervision. He was working with Mahadeowadi Society in the year 1989 and was required to hand-over its charge to its Chairman Shri B. J. Yadav. It is alleged that he did not work as per direction of said Chairman and, therefore, was falsely served with chargesheet dated 5th January 1989. It is then alleged that no charges were proved in the enquiry as well as in the re-enquiry. Even then, he is awarded punishment of reduction of wages, which is an unfair labour practice. It is then contended that he filed P.W. Application No. 19/90 before the Labour Court, Sangli under section 15(2) of the Payment of Wages Act and it was dismissed on 19th July 1995. It is dismissed on the ground of non-maintainability and not on merits. As such, delay if any, in filing the complaint be condoned.

4. On above averments, the Complainant has prayed for declaration of requisite unfair labour practices, direction to cease and desist from committing those unfair labour practices, further directions to pay monthly wages from 1st July 1990 without any reduction and interest of 18% per annum on the arrears as well as other consequential reliefs.

5. The Society filed its written statement at Exh. C-6 and traversed all material allegations made by the Complainant. It contended, at the outset, that the Complainant is not a workman as defined under section 2(s) of the I.D. Act. There is delay of 5 years in filing the complaint and the complaint is not maintainable under section 59 of the M.R.T.U. and P.U.L.P. Act as Complainants P. W. Application No. 19/90 is dismissed. It is case of the Society that the Enquiry Officer has held, as per report dated 30th March 1989, that charge No. 3 is proved. Being aggrieved and dis-satisfied with said report, re-enquiry was directed. In the re-enquiry, same findings were submitted. As such, the punishment permissible under Bye-laws is imposed. It is then explained that re-enquiry was directed in respect of all charges and not in respect of the charges which were not proved earlier. Finally, the Society justified its action and prayed for dismissal of the complaint.

6. Considering rival pleadings, following points arise for my determination :—

(i) Does the Complainant prove that he is an 'employee' as defined under section 3(5) of the M.R.T.U. and P.U.L.P. Act ?

(ii) Whether the complaint is maintainable in view of earlier proceeding under section 15(2) of Payment of Wages Act, before the Labour Court, Sangli ?

(iii) Does the Complainant prove that punishment awarded to him is unsustainable in law ?

(iv) If finding of Issue No. 3 is in the affirmative, whether the Respondent. Society is entitled to lead evidence to substantiate its action ?

(v) Does the Complainant prove that the Respondent. Society has engaged in unfair labour practice under item 9 of schedule IV of the M.R.T.U. and P.U.L.P. Act ?

(vi) What order ?

7. My findings on above points are as under :—

(i) Yes.

(ii) Yes.

(iii) Yes.

(iv) No.

(v) Yes.

(vi) The Complaint is allowed.

Reasons

8. The Complainant filed copies of chargesheet, his statement before the Enquiry Officer, both enquiry reports, show cause notice, his explanation thereof and the punishment order, with list Exh. U-7. He then produced copies of seniority list and pay scale, application for resignation, acceptance thereof and certificate of the then President of the Respondent Society, with list Exh. U-9. He has then filed his affidavit (Exh. U-10).

9. In rebuttal, the Society has filed copy of order passed in P. W. Application No. 19/90 by Labour Court, Sangli, with list Exh. U-11.

10. The Society has filed affidavit (Exh. C-9) of its Secretary. The Complainant has affirmed in the Affidavit (Exh. U-10) that nature of his duties were clerical. Society's Secretary has affirmed that the Complainant was supervising all employees of the Society. The Society has also produced its Bye-laws. Neither the Complainant has produced his duty list, if any, nor the Society. However, clause 14(d) of the Bye-laws say that it is primary duty of the Secretary to maintain accounts and registers of the Society. Considering Complainant's such primary duties, it appears that his predominant work was of clerical nature. The Society has not led any evidence to show that the Complainant was empowered to take appropriate action against other employees of the Society, if any, and award punishment to them. In such circumstances, I find that the Complainant is covered by the definition of 'employee' as defined under section 3(5) of the M.R.T.U. and P.U.L.P. Act. Accordingly, I answer point No. 1 in the affirmative.

11. Admittedly, the Complainant filed P. W. Application No. 19/90 before the Authority under the Payment of Wages Act, Sangli, copy of judgment therein is produced with list Exh. U-11. It is observed that the Applicant therein *i.e.* present Complainant, has not challenged order of punishment. It is not a matter falling under Payment of Wages Act and hence the application is not tenable. I must also state that delay in filing this complaint is condoned by order dated 7th February, 2002. As such, question of non-maintainability of the complaint, on account of filing the same beyond the period of 90 days, does not survive.

12. The Complainant has claimed in his Application before the Authority under the Payment of Wages Act that the Respondent Society is making illegal deductions from his pay. The Society justified its action contending that it is not a deduction but the punishment. Eventually, the Authority under the Payment of Wages Act dismissed the application, mainly on the ground that it lacks jurisdiction. In other words, there was inherent lack of jurisdiction and the application was liable to be treated as non-est. Eventually, bar of section 59 of the M.R.T.U. and P.U.L.P. Act cannot be invoked. As such, the complaint is maintainable. Accordingly, I answer point No. 2 in the affirmative.

13. Shri Kuigade, learned Advocate representing the Complainant submitted that charge No. 3 alone was held to be proved in the enquiry report dated 30th March 1989. It is observed by the Enquiry Officer that Society's Chairman has accepted that he alone was looking after transactions

of selling seeds and said position is accepted by the Chairman. Even then, findings that the Complainant is guilty of the charges No. 3 is an error apparent on the face of the record. He then submitted that original certificate (produced with list Exh. U-9/6) issued by the then President of the Society that no amount is due as on 26th September 1987 from the Complainant, falsify the finding. He then submitted that the Enquiry Officer has held in the later report that charge Nos. 1 and 2 are not proved. Even then, the Society has held that charge of erasers and cancelling the receipts, are proved. Society's such action is totally unsustainable in law. He further submitted that the Complainant was originally working in First Grade and punishment of bringing him III grade, is contrary to settled law.

14. Shri Suryawanshi, learned Advocate representing the Respondent Society replied that the Complainant has deposited Rs. 6702 on 24th February 1989 and hence charge of misappropriation is proved. As such, proper punishment, as provided under Bye laws, is awarded.

15. On perusal of earlier and later enquiry reports, I find that reasonings thereof are totally perverse. The Complainant has stated before the Enquiry Officer that Society's Chairman was looking after all affairs of sales and purchase of seeds. The Chairman has accepted said position. In addition, there is certificate of the Chairman that no amount is due from the Complainant. As such, there was no propriety for the Respondent to hold the Complainant guilty and punishment awarded to him is unsustainable in law. Accordingly, I answer Point No. 3 in the affirmative.

16. Advocate, Shri Suryawanshi tried to canvas that the society is entitled to lead evidence as has pleaded in the written statement that it be allowed to lead evidence. I am not impressed by his arguments. The plea of seeking permission to lead evidence if the findings of the Enquiry Officer are held to be perverse, is to be raised specifically. A general plea that it be permitted to lead evidence, does not automatically mean that such right is reserved and the permission is sought. Consequently, the society is not entitled to lead evidence to substantiate its action. Accordingly, I answer point No. 4 in the negative.

17. In the background of above discussions and findings, it has to be held that the Respondent-Society has engaged in unfair labour practice under item 9 of schedule IV of the M.R.T.U. and P.U.L.P. Act.

18. Complainant's resignation is accepted with effect from 23rd October 1996. As such, he is entitled to requisite benefits *i. e.* difference of wages for the requisite period.

19. In the result, I pass following order.

Order

(i) The complaint is allowed.

(ii) It is declared that the Respondent-Society has engaged in an unfair labour practice under item 9 of schedule IV of the M.R.T.U. and P.U.L.P. Act.

(iii) Respondent-Society is directed to cease and desist from engaging in such unfair labour practice, forthwith.

(iv) The Respondent's order dated 26th July, 1990 awarding punishment to the Complainant and reducing his basic wages from Rs. 850 to Rs. 710 is set-aside.

(v) The Respondent is directed to pay difference of wages and all other benefits to the Complainant as per his regular scale, within one month from to-day.

(vi) Parties to bear their own costs.

Kolhapur,
Dated the 25th August 2003.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

V. D. PARDESHI,
Asstt. Register,
Industrial Court, Kolhapur.

IN THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

COMPLAINT (ULP) No. 385 of 1995.—Shri Mannan Mahamadhanif Pathan, Municipal Chawl No. 1, Room No. 20, Ichalkaranji.—*Complainant*.—*Versus*—The Chief Officer, Ichalkaranji Municipal Council, Ichalkaranji.—*Respondent*.

In the matter of Complaint under section 28(1) read with items 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.—Smt. N. A. Ramtirthakar, Advocate for the Complainant.

Shri R. L. Chavan, Advocate for the Respondent.

Judgment

This is a complaint purported to be under section 28(1) read with items 9 and 10 of schedule IV of the M.R.T.U. and P.U.L.P. Act.

2. Admittedly, the Complainant was appointed as a driver on daily wages with effect from 23rd December 1969 by order dated 27th December 1969 of Chief Officer of the Respondent Ichalkaranji Municipal Council. He was then confirmed with effect from 1st December 1972.

3. It is case of the Complainant that he is continuously working from 23rd November 1969 and ought to have been confirmed from such date. Other Co-employees have been confirmed from dates of their appointments. He is not shown at the requisite serial number in the gradation list and, therefore, he is losing chances of promotion and higher scale. He requested the Council by Application dated 1st December 1995 to confirm him with effect from 23rd December 1969 but in vain. Council's failure to confirm him from 23rd December 1969 is contrary to service conditions and is an unfair labour practice under items 9 and 10 of schedule IV of the M.R.T.U. and P.U.L.P. Act. It is then contended that the cause of action is recurring one and the complaint is within limitation. Finally, the Complainant has prayed for requisite declaration of unfair labour practice, direction to confirm him on the post of driver with effect from 23rd December 1969 with continuity of service and other consequential reliefs.

4. The Council filed its written statement at Exh. C-5 and traversed all material allegations made by the Complainant. It contended, at the outset that alleged cause of action arose in the year 1971 and hence the complaint is barred by limitation. It is then contended that the Complainant was appointed as daily wage driver with effect from 23rd December 1969 and his services were availed when required. Its all affairs are subject to control by the Director of Municipal Administration. The Complainant was then appointed as probationer and then confirmed. As such, it has not engaged in any unfair labour practices, as alleged.

5. Considering rival pleadings, following issues arise for my determination :—

(i) Does the Complainant prove that the Council ought to have confirmed him with effect from 23rd December 1969 ?

(ii) Does the Complainant prove that the Council has engaged in unfair labour practice under item 9 of schedule IV of the M.R.T.U. and P.U.L.P. Act ?

(iii) What order ?

6. My findings on above issues are as under :—

(i) No.

(ii) No.

(iii) The complaint is dismissed.

Reasons

7. The Complainant has produced copies of order dated 27th December 1969 appointing him as a driver on daily wage basis and appointment order dated 19th January 1972 appointing him on probation for a period of 3 months with effect from 1st October 1971, with list Exh. U-4. The Council has produced copies of concerned pages of Complainant's service book with list Exh. C-6. None of the parties led oral evidence.

8. Smt. Ramtirthakar, learned Advocate representing the Complainant submitted that the Complainant was appointed on a vacant post, though on daily wage basis with effect from 23rd December 1969. He then continued to work till today. As such, he ought to have been confirmed with effect from 23rd December 1969.

9. Shri Chavan, learned Advocate representing the Respondent Council replied that the Complainant was appointed in place of another daily wage driver Shri Shaikh and therefore was not appointed permanently. Later on, he was appointed on probation for three months with effect from 1st October 1971. His service book shows that he is paid wages of permanent employee from 1st October 1971 and there is no dispute about his confirmation from such date. Alleged gradation list is not produced. As such, the Complainant is not entitled to permanency with effect from 23rd December 1969.

10. The facts arising out of rival pleadings are no longer in dispute. It appears on perusal of appointment order dated 27th December 1969 that the Complainant was appointed as a driver on daily wage basis in place of another daily wage driver Shri Shaikh. There is no evidence on record to show that he continued to work from 23rd December 1969 till 1st October 1971 *i.e.* the date on which he was appointed on probation for three months. Consequently, it cannot be accepted that he has put continuous service with effect from 23rd December 1969. In such circumstances, council's act of confirming him later on cannot be faulted. No evidence is produced on record by the Complainant to show that his alleged co-workers are confirmed from their dates of appointments, as alleged. It also cannot be accepted that there is continuous cause of action. In the eyes of law, alleged unfair labour practice was complete on confirmation and only effect thereof continuous. In such circumstances, I find that the Complainant has failed to prove his case. Accordingly, I answer point Nos. 1 and 2 in the negative and pass following order.

Order

- (i) The complaint is dismissed.
- (ii) Parties to bear their own costs.

Kolhapur,
Dated the 6th September 2003.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

IN THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

COMPLAINT (ULP) No. 165 of 1996.—Dhundiraj Pandurang Gadgil, R/o. 880, Goanbhag, Sangli.—*Complainant*.—*Versus*—Maharashtra State Electricity Board, Plot No. G-9, 'Prakashgad', Bandra (East), Bombay-51. Through its Superintending Engineer, Circle office, Vishrambag, Sangli.—*Respondent*.

CORAM.—Shri C. A. Jadhav, Member.

Advocates.—Shri K. D. Shinde, Advocate for the Complainant.

Shri S. R. Rane, Advocate for the Respondent.

Judgment

(Dated the 17th July 2003)

This is a complaint purported to be under section 28(1) read with Items 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

2. Admittedly, the Complainant joined the Respondent Board as a Peon on 2nd August 1963. He was then promoted on the post of Lower Division Clerk *w. e. f.* 13th November 1979. The Board published General Order No. 74 on 30th July 1974 to extend special benefits to such employees who remained on a given post for ten years or more without advantage of higher post or higher grade for want of clear vacancies. Such benefit is to be extended irrespective of the fact whether suitable vacancies in the next higher post are available or not. As per the Order, an employee is entitled to pay scale of higher post. The Board then modified the Order on 6th May 1983 whereby condition of serving for ten years came to be reduced to six years *w. e. f.* 1st April 1980. The Board further modified correction slip dated 6th May 1983 by Resolution No. 1210 dated 6th November 1984 whereby benefit of higher post or grade was made available twice instead of once.

3. It is also an admitted position that the Complainant was granted first such benefit and was promoted to draw salary scale of the Assistant Accountant.

4. It is case of the Complainant that he was entitled to second 'G. O. 74 benefit' *w. e. f.* 11th October 1993 as completed nine years in the pay-scale of the post of Asstt. Accountant. Accordingly, he applied on 15th November 1993 for grant of such benefit. The Board informed him by letter dated 6th January 1996 that competent selection committee found him to be unfit for getting second benefit from 13th November 1994 till 31st March 1995. It is alleged that said letter nowhere contains reasons for denial of second benefit and is vague one. He is deprived of the legal benefits for no reasons and board's such action is arbitrary and illegal. According to him, therefore refusal to pay second benefit is an unfair labour practice. Finally, he has prayed for requisite declaration of an unfair labour practice, directions to pay second benefit *w. e. f.* 11th October 1993 and other consequential reliefs.

5. The Board filed its written statement at Exh. C-4 contending that the competent selection committee was appointed to consider the cases for grant of the benefit. It considered confidential reports of the Complainant in its meeting dated 12th October 1995, found the Complainant not upto the desired standard and rejected his claim for getting second benefit. In fact, he was found ineligible till 31st March 1995. Accordingly, it was informed to the Complainant by letter dated 6th January 1996. It is explained by the Board that post of Divisional Accountant carries higher responsibilities and a person working as Divisional Accountant must possess an ability to control all affairs of accounting. The Complainant was not found upto the mark for promoting him on the post of Divisional Accountant and hence found unfit for second benefit. Thus, the Board justified its action and prayed for dismissal of the complaint.

6. Considering rival pleadings, following issues were framed by me at Exh. O-1.—

(i) Does the Complainant prove that he was legally entitled to have 'G.O. 74' benefit secondly with effect from 11th October 1993 ?

(ii) Does the Complainant prove that Board's refusal to pay such benefit is arbitrary and without application of mind ?

(iii) Does the Complainant prove that the Board has engaged in an unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act ?

(iv) What Order ?

7. My findings, on above issues, are as under :—

- (i) No
- (ii) No
- (iii) No
- (iv) The complaint is dismissed.

Reasons

8. None of the parties led evidence, vide joint pursis Exh. CU-1. The Complainant has produced impugned letter dated 6th January 1996 refusing to grant second benefit to him with list Exh. U-5.

9. Shri Shinde, learned Advocate representing the Complainant submitted that Board's action is arbitrary and counter to the object of G. O. 74. Refusal letter is vague. It is simply stated that the Complainant was found unfit. As such, Board's impugned action is an unfair labour practice.

10. Shri Rane, learned Advocate representing the Board replied that 'G. O. 74 benefit' cannot be claimed automatically or as of right. The competent selection committee is constituted to bring transparency and element of objectivity came to be introduced. Otherwise, fitness for promotion is must. Past confidential reports of three years are perused by the committee and then proper decision is taken. The committee found the Complainant unfit. In future the Complainant could be promoted as Divisional Accountant and it is a post of more responsibility. He further submitted that scope of G. O. 74 is made crystal clear in Division Bench decision of Bombay High Court in M. S. E. B. V/s. Dinkar Sadashiv Sane reported in 1993 I CLR at page 865.

11. There is substantial force in arguments of learned Advocate Shri Rane. It is observed in above decision as under.—

“In case of employee is guilty of any charge or the confidential reports of such employee indicate that he is misfit for the promotion or the employee has not passed necessary examination, then in such case the employee cannot demand higher grade as a matter of right.”

12. Scope and ambit of 'G. O. 74 benefit' is made crystal clear in above decision. Consequently, it has to be held that the benefit cannot be claimed automatically and as of right.

13. It is not case of the Complainant that his confidential reports are excellent. His main contention is entitlement to the benefit on completion of requisite years *i. e.* automatic one. His such plea is clearly answered in the above decision. In my humble opinion, it is not necessary to entirely repeat those observations in this judgment. Suffice to say that decision of Division Bench non-suits the Complainant.

14. Even otherwise, decision of competent selection committee cannot be a matter of judicial review. Shri Rane rightly relied on decision of Hon'ble Apex Court in Amrik Sangh V/s. Union of India reported in 2002 LIC at page 2192. The committee has scrutinised Complainant's case and found him to be unfit.

15. In the background of above discussion, I hold that the Complainant was not legally entitled to have second benefit. The Board is well justified in refusing to grant second benefit and no unfair labour practice is proved. Accordingly, I answer issue Nos. 1 to 3 in the negative and pass following order :—

Order

- (i) The complaint is dismissed.
- (ii) Parties to bear their own costs.

Kolhapur,
Dated the 17th July 2003.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

REVISION APPLICATION (ULP) No. 189/1996 and 190/1996.—Deputy Engineer, Minor Irrigation Sub-Division, (Panchayat Samiti) Miraj, District : Sangli.—*Petitioner*.—*Versus*—(1) Sahebrao Yashwant Shinde, R/o. Mallewadi, Tal : Miraj, District : Sangli.—*Respondent (Petitioner of Revision (ULP) No. 189/96)*;—(2) Bhaskar Yallappa Kamble, R/o. Salgar Tal : Miraj, District : Sangli.—*Respondents (Petitioner of Revision (ULP) No. 190/96)*.

In the matter of Revisions u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.—Shri C. A. Jadhav, Member.

Appearances.—Shri S. R. Pisal, Asstt. Government Pleader for the Petitioner.

Shri K. D. Shinde, Advocates for the Respondents.

Judgment

These are Revision by original Respondent challenging legality of common judgment and order passed in complaint (ULP) Nos. 290 and 291 of 1993 by Labour Court, Sangli, whereby he is directed to reinstate original Complainants with continuity of service and full back wages.

2. Common questions of law and facts are arising out of these Revisions and hence are disposed off by a common judgment, with consent of parties.

3. Complaint (ULP) No. 290/1993 was filed on 29th December 1993 by one Shri Bhaskar Yallappa Kamble (Respondent No. 1 of Revision (ULP) No. 190/1996) against present Petitioner - Deputy Director alleging that he was appointed as a cleaner on 14th January 1985 by the Deputy Engineer and was directed to work on water tanker which was providing drinking water in the rural area. He worked for 8 years and was entitled to be taken on converted regular temporary establishment as per the terms of Kalelkar Award. His proposal was sent to Government in the year 1991 for confirmation but was terminated on 16th December 1993 without notice or notice pay and retrenchment compensation. Finally, he prayed for reinstatement with continuity of service and full back wages.

4. Complaint (ULP) No. 291/1993 was filed on 29th December 1993 by one Shri Sahebrao Yashwant Shinde, who is Respondent No. 1 of Revision (ULP) No. 189/1996 against present Petitioner - Deputy Engineer alleging that he was appointed as a driver on 18th April 1985 by the Deputy Engineer and was directed to work on the water tanker which was providing drinking water in the rural area. He worked for more than 8 years and was entitled to be taken on converted regular temporary establishment as per the terms of Kalelkar Award. His proposal was sent to Government in the year 1991 for confirmation but was orally terminated on 16th December 1993, without notice or notice pay and retrenchment compensation. Finally, he prayed for reinstatement with continuity of service and full back wages.

5. Deputy Engineer filed separate Written statement contending that the Complainants were appointed temporarily for a specific work and specific period and his services came to an end as a result of non-renewal of contract of employment. As such, provisions of Section 25 F of the I. D. Act are not attracted. In addition, no funds were available and hence the Complainants were dis-continued. Finally, he prayed for dismissal of both complaints.

6. Considering rival pleadings, learned Labour Court clubbed the Complaints and issues were framed at Exh. O-5 in both complaints.

7. Complainant Shri Shinde, examined himself as well as on behalf of other Complainant Shri Kamble. He deposed in terms of their pleadings. The Deputy Engineer examined himself at Exh. C-8. Both parties filed documentary evidence as well.

8. Learned Labour Court, on perusal of evidence and hearing both parties, observed that both Complainants have put continuous service of more than 240 days in twelve calendar months preceding the dates of their termination but are not paid retrenchment compensation and therefore, their termination is an unfair labour practice. It then observed that both Complainants were certified to be entitled to be benefits of Kalelkar Award but are terminated for patently false reasons by colourable exercise of powers. Ultimately, it allowed both complaints, as above, on 10th April 1996. Said decisions are challenged in these Revisions.

9. I heard both sides. Considering rival submissions following points arise for my determination.

(i) Whether impugned decision directing reinstatement with continuity of service and full back wages, warrant interference ?

(ii) What order ?

10. My findings, on above points are as under :—

(i) No

(ii) Both Revision Applications are dismissed.

Reasons

11. These being Revisions under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise rival pleadings meticulously. The only material question is whether the documents on record are incapable of supporting impugned decisions. In other words, whether impugned decisions are perverse or unjustifiable ?

12. Shri Pisal, learned Assistant Government Pleader representing the Deputy Director tried to canvass that the Complainants were appointed for a specific period and for specific purpose, are governed by provisions of Section 2(00) (bb) of the I. D. Act and hence provisions of section 25 B and 25 F of the I. D. Act are inapplicable.

13. Admittedly, none of the Complainants are issued appointment orders stating that they are appointed for specific purpose and specific period. On the contrary, they were continuously working from the year 1984-85 till their termination. Chart 4 (Exh. U-12) shows their working days. In addition, Report (Exh. U-13) made by Deputy Engineer itself says that both Complainants are entitled to be brought on Converted Regular Temporary establishment as per Kalelkar Award. As such, plea of employment contemplated under section 2(00) (bb) of the I. D. Act is clearly after thought and for the sake of arguments only and fails. It was obligatory for the Deputy Engineer to follow provisions of Section 25 F and 25 G of the I. D. Act while terminating services of the Complainants but admittedly those are not complied. As such, learned Labour Court was well justifiable in granting reinstatement with continuity of service and full back wages by holding that the termination is an unfair labour practice. It also needs to be noted that the Complainants are still in employment by virtue of interim order passed by the Labour Court. Such fact depicts that they were employed for doing work of perennial nature and not for a specific purpose and period. I, therefore, hold that there are no merits in these Revision Applications. On the contrary, there is every substance in reasoning of impugned decisions and no interference is called for. Accordingly, I answer Point No. 1 in the negative and pass following order.

Order

- (i) Both Revision Applications are dismissed.
- (ii) A copy of this judgment be kept in other Revision Application.
- (iii) Parties to bear their own costs.

Kolhapur,

Dated the 14th July 2003.

C. A. JADHAV,

Member,

Industrial Court, Kolhapur.